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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
Interexchange Carrier Purchases of Switched Access Services Offered By Competitive Exchange Carriers	)	CCB/CPD File No. 98-63
	)	
	)	
Petition of US West Communications, Inc. For Forbearance from Regulation as a Carrier in the Phoenix, Arizona MSA	)	CC Docket No. 98-157
	)	

COMMENTS

BellSouth Corporation ("BellSouth"), on behalf of itself and its subsidiaries, hereby submits its Comments on the *Further Notice of Proposed Rulemaking* released August 27, 1999.[1]

I. INTRODUCTION

1. This proceeding is a continuation of the access reform process that started six years ago.[2] While there is no question that the rule changes adopted by the Commission a few weeks ago represent a good beginning for access reform, the Commission, nevertheless, must remain committed to completing the process. In these comments, BellSouth sets forth recommendations

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[1] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, and Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in Phoenix, Arizona MSA,* CC Docket Nos. 96-262, 94-1, 98-63, and 98-157, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-206, released August 27, 1999 (*"FNPRM"*).

[2] On September 17, 1993, USTA filed a Petition for Rulemaking requesting the Commission to amend its rules in order to reform interstate access charge rules. *See In the Matter of Reform of the Interstate Access Charge Rules*, RM-8356.

that will result in the types of flexibility and deregulation that are necessitated by today's market environment.

2. In stark contrast to completing access reform, the *FNPRM* also seeks comment on a proposal to prescribe a capacity-based rate structure for local switching as well as to modify the price cap formulas. These proposed modifications represent the complete antithesis of access reform. They would revert back to an overly restrictive form of regulation that is completely out of step with current market realities. Regulations that limit the local exchange carriers ("LECs") ability to manage its own business serve only to disrupt the competitive marketplace and stifle innovation. As shown in these comments, the *FNPRM's* proposals are misguided and should not be adopted.

II. ISSUES

A. Geographic Deaveraging For Switched Access

3. The *FNPRM* raises several questions regarding the degree to which the Commission should permit switched access rates to be deaveraged.[3] Beginning with common line charges, the inquiry opens with whether deaveraging of common line charges should be permitted without a competitive showing. BellSouth submits that the inquiry is misfocused. The relevant question is not whether common line elements should be permitted to be deaveraged, but rather is there any justification for prohibiting deaveraging. The current limitations on deaveraging are a vestige of an antiquated regulatory system that is predicated on local exchange monopolies and implicit universal service support. No longer is there a reason, public policy or otherwise, for the

[3] *FNPRM* ¶¶ 191-199.

Commission to block a local exchange carrier from moving toward more economically rational rate structures of which deaveraged rates is a component.

4. The Communications Act has always contemplated carrier-initiated rates. Whatever the public policy considerations that may have justified regulatory limitations in a monopoly environment simply are no longer applicable. Such regulatory limitations simply cannot be harmonized with the open, competitive local market mandated by the Telecommunications Act of 1996. Further, to the extent that the deaveraging limitations are not reflective of the economics of providing service, such limitations become just another form of implicit subsidy that the Commission is obligated to eliminate.

5. Accordingly, the Commission should permit common line elements to be deaveraged without condition. Access reform should enable the implementation of economically rational rate structures. The Commission should avoid attempting to force deaveraging upon LECs or attempting to craft a one-size-fits-all response to deaveraging. Instead, access reform should create the conditions for more rational rate structures to be adopted. For example, to rationalize the common line rate structure and eliminate implicit subsidies, USTA, during the universal service proceeding, urged the Commission to shift the recovery of PICC amounts from interexchange carriers to end users.[4] More recently, the CALLS proposal, of which BellSouth is one of the sponsors, would rationalize common line cost recovery by transitioning all recovery responsibility to the end user.[5] As more rational recovery mechanisms are put into operation, a

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[4] *See* USTA Ex Parte Letter, CC Docket No. 96-45, dated September 18, 1998.

[5] Permitting more rational recovery of common line costs of necessity will require the Commission to increase the caps on subscriber line charges.

natural follow-on will be rate deaveraging. Thus, for example, while not requiring rate deaveraging, the CALLS proposal accommodates and permits such deaveraging.

6. For the purpose of this proceeding, the appropriate outcome would be for the Commission to lay the foundation for the eventual deaveraging of common line elements.[6] Such an approach recognizes that there is no single basis for deaveraging common line elements. Circumstances will vary by LEC, and these circumstances will change over time. The Commission has recognized that, in permitting deaveraging, variation among LECs should be accommodated. In its most recent access charge reform order, the Commission modified its zone pricing rules for the Trunking Basket, affording LECs a considerable degree of freedom to define and subsequently modify geographic zones. This rule change is an acknowledgment that a simple formula approach to deaveraging is inappropriate because there are many factors that affect geographic deaveraging. This same reasoning applies to deaveraging common line elements.

7. While there may be similar factors that impact all LECs, the way in which such factors affect each LEC will likely differ. Accordingly, the Commission should avoid presuming that it is in a better position than an individual LEC to determine how and when to implement common line deaveraging. LECs are better able to determine geographic zones that reflect their specific conditions.

8. There is no need for the Commission to establish a tortuous regulatory procedure that would require approval of LEC deaveraging plans before deaveraging could be implemented. There are sufficient safeguards and market incentives to insure that LECs implement

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[6] For example, rule revisions that would permit LECs to implement the CALLS proposal would be an acceptable result for this proceeding.

deaveraging in a manner consistent with its cost structure. For example, UNE deaveraging not only compels common line deaveraging but also requires that LECs be able to implement a consistent deaveraging approach in order to remain competitive in the marketplace.

9. The Commission must be mindful that over-regulation is not penalty free. There is a potential for irreconcilable conflicts to arise from over-regulation. For example, deaveraging is a component of UNEs and the new federal universal service fund. If the Commission attempts to rigidly define deaveraged zones for common line access elements, there is a potential for disparity between geographic zones for common line elements on the one hand, and other deaveraging requirements for UNEs or universal service. Given the considerable regulatory oversight to which UNEs and universal service are subject, regulatory intervention with regard to common line deaveraging is unnecessary.

10. The Commission should also permit LECs to deaverage traffic sensitive rates. Such deaveraging makes sense from a competitive perspective. Enabling LECs to respond to competition that is geographically targeted is procompetitive. Competition, as the Commission expects, establishes the pricing boundaries. While deaveraging of traffic sensitive elements such as switching would not be inconsistent with overall cost characteristics, competition alone justifies and compels that deaveraging be permitted.

B. Phase II Pricing Flexibility For Traffic Sensitive Services

11. In establishing Phase II triggers for traffic sensitive services, the Commission should use the same type of showing that is used for the Phase I triggers. The Commission has already determined that the appropriate trigger for Phase I relief for traffic sensitive services is whether a competitor offers services over their own facilities to customer locations. There is no

need to create a different yardstick for determining Phase II relief. Instead, the Commission need only determine the point on the yardstick that would activate relief.

12. In response to the *FNPRM*, USTA is proposing a threshold level for Phase II traffic sensitive triggers. Specifically, USTA recommends that the Phase II traffic sensitive trigger be based on a showing that competitors in the aggregate offer service to at least 50 percent of the customer locations in a MSA. In addition, USTA proposes an alternative revenue-based test to account for the situation where revenue is concentrated among a few customers.[7] BellSouth endorses the USTA proposal.

13. Phase II relief for traffic sensitive services should correspond to the same relief that is afforded trunking basket services in Phase II. Further, in granting Phase II relief, the Commission should not, as a general matter, fashion additional safeguards or limitations that diminish the relief. Nevertheless, there are additional activities taking place that are intended as steps to rationalize the access recovery rules that may be implemented before or concurrent with the changes made as a result of this proceeding. As one of the joint sponsors of the CALLS proposal, BellSouth believes common line recovery should move from carriers to end users. End user cost recovery would be accomplished through increased caps on subscriber line charges. To the extent that the Commission would view maintaining the increased caps on subscriber line charges (*i.e.,* those resulting from moving common line cost recovery to the end user) as a safeguard, BellSouth would view such a safeguard as consistent with the CALLS proposal.

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[7] Under the revenue test, Phase II relief would be granted when it can be shown that competitors in aggregate offer service to customer locations that represent at least 65 percent of the price cap incumbent's common line SLC revenue in the MSA or RSA.

C. Local Switching and Tandem Switching Rate Structures

14. Incredibly, in a proceeding whose purpose is to reform regulation and to recognize the presence of competition, the Commission begins an inquiry as to whether it should prescribe new rate structures for local and tandem switching. It has only been seven days since the rules permitting LECs to file new services that depart from the rigid switched access rate structure rules without first seeking Commission permission have taken effect. This change represented a step away from stifling regulation and toward a market driven response and, as such was a positive initial step. However, all the rule change does is allow the regulatory scheme of carrier-initiated rates adopted in 1934 to operate.

15. The significant reform will be to unburden incumbent LECs from the strictures of the access charge rules that only bind them and not their competitors. The framework for trunking services, except tandem switching, is complete with Phase I and II relief mechanisms in place. With Phase II relief, trunking services are subject to neither price cap or access charge rules. For traffic sensitive services, essential components, specifically the regulatory relief and the triggers, remain to be defined. This proceeding was the vehicle for completing the reform activities that have been years in their development. Before completing a reformation of its access charge rules, the Commission embarks on a path of re-regulation.

16. The idea that the Commission can identify and prescribe a new rate structure is incomprehensible. A fundamental underpinning of access reform is that the access charge rules are outdated. No matter what modifications are made to the prescribed rate structures, they too will be outdated in short order. Regulatory processes cannot keep up with the rapid and continuous change that are characteristic of today's marketplace.

17. Not only is the re-regulation of access charge rate structures the wrong policy, but, in addition, there is no compelling economic reason for the Commission to reverse regulatory direction. In its comments, USTA demonstrates that the current rate structure is an economically rational means of recovering traffic sensitive costs of switching. USTA submits a statement prepared by Dr. William Taylor who concludes that a capacity-based structure would not lead to improvements in economic efficiency over the current rate structure. Whatever benefits the Commission may have perceived that a capacity-based rate structure would convey, it is clear from Dr. Taylor's statement that, the Commission's presumptions regarding a capacity-based structure are unfounded.

18. Likewise, USTA's comments firmly establish that there is no need to adjust the traffic sensitive price cap formula. To paraphrase Dr. Taylor, the price cap system is not broken, so there is nothing to fix. The Commission's suggested adjustment to the traffic sensitive price cap formulas appears to reflect an irrational fixation on regulatory earnings. Focusing on earnings, however, is misleading. Indeed, even the Commission has acknowledged that rates of return (and, hence, earnings) cannot be compared to price cap performance.[8] As Dr. Taylor demonstrates, price cap LECs have not performed as well as the average industrial firm but the LEC's customers have done considerably better as a result of price cap regulation. There is simply no empirical evidence to support adjusting the price cap formula.

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[8] In acting on a request for waiver by Aliant so that it could revert back to rate of return regulation from price cap regulation, the Commission rejected MCI's objection that Aliant had exceeded the authorized rate of return every year since it was under price cap regulation. The Commission stated, "[i]n response to MCI WorldCom's argument that Aliant has exceeded the authorized rate-of-return for rate-of-return LECs every year since electing price cap regulation, we believe that this is an inappropriate comparison because these are different regulatory paradigms." *In the Matter of Alltel Corporation Petition for Waiver of Section 61.41 of the Commission's Rules and Applications for Transfer of Control*, CCB/CPD 99-1, *Memorandum Opinion and Order*, FCC 99-156, released September 3, 1999, ¶ 33.

D. Common Line Formula

19. The Commission is considering changing the common line price cap formula such that the g/2 factor in the formula would become "g" because of alleged evidence that the IXCs influence per minute growth more than the LECs. USTA identifies several flaws in the Commission's analysis and demonstrates that the Commission should abandon its proposed revision to the common line formula. BellSouth fully supports USTA's analysis and conclusions.

E. CLEC Access Charges

20. The Commission solicits comments on whether is should subject CLEC terminating access rates to some form of regulation. As a general matter, the Commission should continue to promote market-based solutions rather than regulation as the appropriate mechanism to ensure just and reasonable rates. The marketplace will discipline service providers and will effectively check unreasonably high prices. To the extent that there are isolated instances of unreasonably high rates being accessed by CLECs, the Commission should not over-react. The Complaint process provides a remedy for aggrieved interexchange carriers. To make this remedy more effective, particularly in this relatively new period where there are multiple local exchange carriers, the Commission could establish a benchmark rate based on the terminating charge of the incumbent LEC.[9] If a complainant establishes that the CLEC charges a terminating rate that is higher than the benchmark rate, the complainant should be deemed to

[9] The benchmark could be set at the terminating rate of the incumbent LEC or a small percentage above the incumbent LEC's rate.

have made a *prima facie* case of unlawfulness shifting the burden to the CLEC to produce evidence that its charge is just and reasonable.

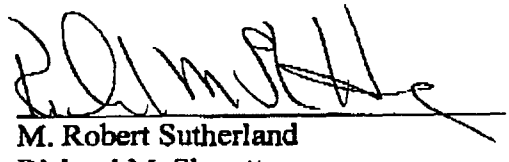
21. The approach suggested by BellSouth retains at its core the market as the primary determinant of prices. Nothing in BellSouth's proposal limits a CLEC's ability, in the first instance, to establish prices for its services or to structure its charges in any way it believes is consistent with market demand and competitive pressures. While the FCC maintains an oversight capacity, marketplace forces, not regulation, should govern competition.

III. CONCLUSION

22. The Commission has taken several steps to begin the process of reforming access charges. This proceeding can complete the process and put in place a regulatory structure conducive to the competitive marketplace. Yet, the Commission can easily fail at achieving this all-important objective if it diverts its attention from regulatory reform to re-regulation activities. The choice belongs to the Commission, but the public interest demands a correct decision.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 

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Date: October 29, 1999

CERTIFICATE OF SERVICE

I do hereby certify that I have this 29th day of October 1999 served the following parties to this action with a copy of the foregoing COMMENTS by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.

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